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7 **IN THE UNITED STATES DISTRICT COURT FOR**  
8 **THE WESTERN DISTRICT OF WASHINGTON**

9 JANE TOTTEN,

No.

10 Plaintiff,

COMPLAINT

11 v.

*With Jury Demand*

12 MICHAEL OSBERG, a Washington State  
13 Patrol Trooper, and JANE DOE OSBERG,  
14 and the marital community comprised thereof;  
15 J. DOE WASHINGTON STATE PATROL  
16 SUPERVISORY OFFICERS 1-3; JOHN R.  
CHIEF.

17 Defendants.

18  
19 COMES NOW the Plaintiff, Jane Totten, through her attorneys of record, Kannin Law  
20 Firm P.S., and hereby presents the following claims:

21 **JURISDICTION**

22 1.

23 Jurisdiction is founded upon the existence of a federal question.

24 2.

25 This is an action to redress the deprivation under color of statute, ordinance, regulation,

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1 custom or usage of rights, privileges, and immunities secured to the plaintiff by the Fourth, and  
2 Fourteenth Amendments to the Constitution of the United States (42 U.S.C. § 1983).

3 3.

4 Jurisdiction is founded upon 28 U.S.C. § 1331 and § 1343(3) and (4).

5  
6 4.

7 Venue is proper in the United States District Court of the Western District of Washington  
8 because the acts or omissions which for the basis of the Plaintiff's claims occurred in Grays Harbor  
9 County, Washington and the defendants reside in Washington State.

10 5.

11 At all times relevant to this complaint, Plaintiff was an individual residing in Thurston  
12 County, Washington.

13 6.

14 At all times referred to herein Defendant John R. Batiste was employed by Defendant  
15 Washington State Patrol as its Chief and is believed to have been the supervising and  
16 commanding officer of Defendants J. Doe Washington State Patrol Supervisory Officers 1-3; and  
17 Defendant Trooper Michael Osberg.

18 7.

19 At all times referred to herein, Defendants J. Doe Washington State Patrol Supervisory  
20 Officers 1-3, were employed by Washington State Patrol and are believed to have been the  
21 supervising and commanding officers of Defendant Trooper Michael Osberg. At all times  
22 referred to herein, Defendant Michael Osberg, was employed by Washington State Patrol.

23  
24 8.

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26

1 Plaintiff sues Defendant trooper Osberg, in his individual capacity, Defendants WSP J.  
 2 Doe Supervisors 1- 3 in their individual capacities, and Defendant Chief Batiste in his individual  
 3 capacity as the Chief and the lead policy maker for the Washington State Patrol. At all times  
 4 relevant to this complaint the defendants were acting under color of law.

### 5 FACTS

6 9.

7 On May 22, 2019, Plaintiff Mrs. Jane Totten was driving south on “D” Line road in the  
 8 Capitol State Forest, Grays Harbor County, Washington. Her husband Charles Totten was with  
 9 her in their car and was sitting in the rear seat. Plaintiff Mrs. Jane Totten was sixty-eight (68)  
 10 years old on May 22, 2019. Her husband Charles Totten was 90 years old. After driving into the  
 11 Capitol State Forest Mrs. Totten pulled off the road to park. Plaintiff came to a complete stop,  
 12 turned off the ignition and parked her car. Plaintiff had stopped and parked near a legal camping  
 13 zone. After being parked for short time, Plaintiff Totten decided to turn back onto “D” Line  
 14 road. Plaintiff Mrs. Totten reversed her vehicle so she could pull out onto “D” Line road. As she  
 15 reversed one of the car’s back wheels became stuck in the mud. Plaintiff Totten tried to free her  
 16 rear tire from the mud but could not get it free, so she called her automobile liability insurance  
 17 company for roadside assistance and asked for help pulling her stuck vehicle out of the mud so  
 18 she could drive home. After a while roadside assistance called Mrs. Totten back and told her  
 19 they were unable to assist her because they could not confirm her location in the Capitol Forest.  
 20 The insurance agent for roadside assistance further informed Totten that she, the roadside  
 21 assistance operator had called 911 to further assist Totten by reporting to the 911 operator that  
 22 Totten’s car was stuck on the side of the road in the Capitol State Forest.

23 10.

24 Soon thereafter Defendant Trooper Osberg arrived on the scene. Plaintiff Mrs. Totten  
 25 told the trooper she was stuck and needed help getting traction under her rear tires. Shortly after

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1 he arrived Defendant Osberg instructed Plaintiff Mrs. Totten to get out of her car. Trooper  
2 Osberg disregarded Mrs. Totten's request for help with her stuck car. After the Defendant  
3 Trooper Osberg got Plaintiff Totten out of her car, Defendant Osberg told Plaintiff Mrs. Totten  
4 that he wanted Totten to perform roadside agility tests for him. Defendant Osberg selected an  
5 area on the shoulder of the road and told Mrs. Totten to do the tests at the site he selected for her  
6 on the side of the Capitol Forest road. Defendant Osberg also instructed Mrs. Totten on how to  
7 do the tests which included a demonstration and verbal instructions. Mrs. Totten complied with  
8 Trooper Osberg's instructions and attempted to do the tests he instructed her to perform on the  
9 side of the road. Before starting the tests Plaintiff told Osberg her age, that she was 68 years old,  
10 not physically fit, was clumsy, and a bit uncoordinated, thus she would likely not be able to  
11 complete the roadside agility tests. Mrs. Totten also told the Trooper she was worried about her  
12 90-year-old disabled husband, Charles, who was sitting in the car watching and listening.  
13 Trooper Osberg told Plaintiff he was going to proceed with testing her even though she was 68  
14 years old not physically fit and was worried about her husband. After Plaintiff Mrs. Totten  
15 attempted the roadside agility tests as instructed by Defendant Trooper Osberg, Osberg told Mrs.  
16 Totten that he thought she was under the influence of alcohol. Plaintiff Totten told defendant  
17 Trooper Osberg that she had not consumed alcohol beverages. If anything was making it hard for  
18 her to do the tests, it may be that she is 68 years old and not very coordinated. Defendant  
19 Trooper did not believe Plaintiff's explanation for her poor test performance. Next the Defendant  
20 had Plaintiff Mrs. Totten perform a preliminary breath test (PBT) there at the roadside. The PBT  
21 resulted in .000 blood alcohol concentration reading. Next Defendant Trooper Osberg accused  
22 the Plaintiff of being under the influence of marijuana or some other drug. Plaintiff told the  
23 Defendant she did not smoke marijuana and had not taken drugs before driving her car. Plaintiff  
24 suggested that Defendant Osberg contact his supervisor however Defendant Osberg neither  
25 contacted his supervisor nor did he attempt to contact any other officers or supervisors to further

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1 screen Plaintiff Totten for being under the influence of alcohol or drugs and refused her requests  
2 to do so. Defendant Trooper Osberg arrested Mrs. Totten for DUI, in violation of RCW  
3 46.52.502, a gross misdemeanor crime.

4 11.

5 Plaintiff's husband Charles Totten was sitting in the back seat of Plaintiff's parked car.  
6 He could see and hear what Defendant Osberg was doing, and he saw how Osberg arrested  
7 Plaintiff Jane Totten, Mr. Charles Totten's wife. Defendant Osberg searched Mrs. Totten and her  
8 car. Defendant Osberg caused Plaintiff's dog Lucy, who was in the car with her and her  
9 husband on May 22, 2019, to be seized and held at an animal hospital/shelter in Grays Harbor  
10 County. Defendant Osberg caused the Plaintiff's car to be impounded. Plaintiff's husband  
11 Charles Totten, who was mentally and physically incapacitated was in the back seat of the car.  
12 Defendant Trooper Osberg arrested Plaintiff Jane Totten, Charles Totten's wife and care giver,  
13 so Charles Totten had to be taken into protective care by a local health care provider. Defendant  
14 Osberg caused Plaintiff's car to be seized, and towed away so that she could not drive it nor  
15 could anyone else.

16 12.

17 After he arrested the Plaintiff, Defendant Osberg took Plaintiff Totten to the Grays  
18 Harbor County jail and booked her into the jail. Defendant Osberg caused a criminal action to be  
19 instituted against Plaintiff Totten when Osberg reported to his superiors that Jane Totten had  
20 committed the gross misdemeanor crime of DUI and when he prepared a probable cause  
21 statement in which Osberg states Jane Totten committed the crime of DUI. Defendant Osberg  
22 submitted these allegations to the Grays Harbor County prosecuting attorney's office.

23 13.

1 The facts collected by Defendant Osberg show that he did not have probable cause to  
2 arrest Plaintiff Totten for DUI.

3 14.

4 The Grays Harbor County prosecuting attorney elected not to prosecute Plaintiff Totten  
5 for DUI.

6 15.

7 At the Grays Harbor County jail Plaintiff Totten was housed in the general population.  
8 When she was in custody at the jail Another prisoner at the jail assaulted Plaintiff Totten. On or  
9 about May 25, 2022, Plaintiff Totten was brought from the jail to the Grays Harbor County  
10 courthouse for an arraignment hearing based on The Grays Harbor County Prosecuting  
11 attorney elected not to proceed with a criminal case against Mrs. Totten. Plaintiff Totten was  
12 released from the Grays Harbor County jail.  
13

14 16.

15 At the time he decided to stop and arrest Plaintiff Totten, and initiate a criminal  
16 prosecution against Jane Totten, Defendant Osberg was employed by the State of Washington as  
17 a State Trooper at the Washington State Patrol. Defendant trooper Osberg arrested Mrs. Totten in  
18 his individual capacity as an employee of Defendant Washington State Patrol and arrested  
19 Plaintiff Mrs. Totten under color of law. Defendant Trooper Osberg arrested Plaintiff Mrs.  
20 Totten without probable cause that Mrs. Totten had committed a crime. Defendant trooper  
21 Osberg arrested Mrs. Totten contrary to the laws of the United States of America as further  
22 enumerated in the Federal Constitution.  
23

24 17.

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26

1 On May 22, 2019, and days subsequent Defendants J. Doe 1- 3 WSP Supervisors, and  
2 Defendant Chief Batiste were the Washington State Patrol employees responsible for supervising  
3 Defendant Osberg. Defendants J.Doe 1- 3 WSP Supervisors, and Defendant Chief Batiste were  
4 responsible for ensuring Defendant Osberg was adequately and lawfully trained and supervised  
5 when carrying out his duties. The Defendants failed to supervise and train Defendant Osberg  
6 such that Osberg applied testing procedures not validated for persons over 65 years of age or for  
7 persons with other physical limitations and/or Defendant Osberg failed to consider issues related  
8 to test subjects that he was trained to consider.

9 18.

10 As a direct and proximate result of the Defendants' acts and failures to act. Plaintiff  
11 Totten was publicly embarrassed and humiliated in front of her husband. Plaintiff Totten also  
12 suffered a loss of enjoyment of her own life. Plaintiff Totten experienced physical pain when  
13 she was assaulted in the jail where Defendant brought her after he arrested her. She suffered  
14 bodily injuries, mental pain and psychic trauma that required the expenditure of money for  
15 treatment.

16 19.

17 Before this incident with Defendant Osberg, Plaintiff Mrs. Jane Totten had never been  
18 arrested and had no criminal record of any kind. As a direct result of Defendant Osberg's and the  
19 other Defendants' errors, acts, and failures to act Plaintiff Totten suffered harms to include the  
20 loss of her personal liberty, embarrassment, humiliation, and frustration, and continues to suffer  
21 these harms. Plaintiff Totten expended money for medical treatment/counseling and is expected  
22 to expend further amounts for additional treatment. Plaintiff Totten incurred otherwise  
23 unnecessary attorneys' fees and costs. As a direct and proximate result of Defendant Osberg's  
24

1 and the other Defendants' mistakes, acts, and failures to act Plaintiff Totten suffered damages in  
2 amount to be proven at trial.

3  
4 20.

5 As a direct and proximate result of the said acts of the defendants the plaintiff Jane Totten  
6 suffered the following injuries and damages:

7 a. Violation of her constitutional rights under the Fourth and Fourteenth Amendments to  
8 the United States Constitution to be free from an unreasonable search and seizure of her person  
9 and her property;

10 b. Physical and mental pain and suffering requiring the expenditure of money for  
11 treatment;

12 c. Economic and non-economic damages incurred and expected to be incurred, in an  
13 amount to be established at trial.

14  
15 **FIRST CLAIM: VIOATION OF 42 U.S.C § 1983 AGAINST DEFENDANT MICHAEL**  
16 **OSBERG IN HIS INDIVIDUAL CAPACITY FOR VIOLATION OF PLAINTIFF'S 4<sup>th</sup>**  
17 **AND 14<sup>th</sup> AMENDMENT RIGHTS**  
**(ARREST WITHOUT PROBABLE CAUSE)**

18 21.

19 Plaintiff re-alleges paragraphs 1 through 21 above.

20 22.

21 42 U.S.C. § 1983 provides in part:

22 Every person who, under color of any statute, ordinance, regulation, custom, or usage of  
23 any State or Territory subjects, or causes to be subjected, any person of the United States  
24 or other person within the jurisdiction thereof to the deprivation of any rights, privileges,  
or immunities secured by the Constitution and laws shall be liable to the party injured in  
an action at law, suit at equity or other proper proceeding for redress.

25 23.

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1 Plaintiff Totten had firmly established rights under the Fourth Amendment forbidding  
2 unlawful and unreasonable seizure of her person granting her the right to be free from being  
3 arrested without a warrant and without probable cause that plaintiff Totten had committed a  
4 crime as well as an established right to be free from being searched without search warrant or an  
5 exception to the warrant requirement, and a further right to not have her property taken from her  
6 in a warrantless seizure of her dog Lucy and her car.

7  
8 24.

9 At all times material herein, defendant Michael Osberg, acting under color of state law,  
10 had a duty to refrain from depriving plaintiff Totten of her constitutional rights. Defendant  
11 Osberg breached the aforementioned Federal statute and breached his legal duties to refrain from  
12 depriving plaintiff of her constitutional rights by searching Ms. Totten at the roadside in the  
13 Capitol Forest, and illegally arresting plaintiff Mrs. Totten without a warrant and/or without  
14 probable cause that she had committed a crime, on May 22, 2019, which constituted a violation  
15 of plaintiff's clearly-established rights under the Fourth and Fourteenth Amendments to the  
16 Constitution of the United States, forbidding unlawful and unreasonable seizures.

17 25.

18 Defendant Osberg further breached the aforementioned Federal statute and breached his  
19 legal duties to refrain from depriving plaintiff of her constitutional rights seizing Ms. Totten's  
20 dog Lucy and her Hyundai car, without a warrant and/or without probable cause that Totten had  
21 committed a crime, on May 22, 2019, which constituted a further violation of plaintiff's clearly-  
22 established rights under the Fourth and Fourteenth Amendments to the Constitution of the United  
23 States, forbidding unlawful and unreasonable seizures.

24 26.

25 At the time he breached his duties to plaintiff Totten defendant Osberg acted under  
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1 color of law and was employed by the Washington State Patrol.

2 27.

3 Defendants' acts and failures to act caused plaintiff to suffer physical and mental injury,  
4 pain, humiliation, and fear as a direct and proximate result of the defendants' acts and failures to  
5 act. Plaintiff hereby claims damages for the injuries set forth herein under 42 U.S.C. § 1983  
6 against defendant Osberg for violation of her constitutional rights under color of law, in amount  
7 to be proven at trial.

8 28.

9 The conduct of the defendant was knowing, intentional, reckless, and/or malicious, by  
10 reason of which plaintiff is entitled to punitive damages.

11 **CLAIM: UNDER 42 U.S.C § 1983 AGAINST WSP J.DOE SUPERVISORS 1 – 3 &**  
12 **CHIEF JOHN R. BASTITE AS SUPERVISOR AND POLICY MAKER FOR**  
13 **VIOLATION OF PLAINTIFF'S FOURTH AND FOURTEENTH AMENDMENT**  
14 **RIGHTS (FALSE ARREST/ARREST WITHOUT PROBABLE CAUSE**  
15 **UNCONSTITUTIONAL POLICY PRACTICE OR CUSTOM)**

16 29.

17 Plaintiff realleges paragraphs 1 through 28 above.

18 30.

19 Prior to May 22, 2019 Defendants WSP J. Doe Supervisors 1 -3 and Defendant John R.  
20 Batiste, developed and maintained policies, practices, or customs, by and through which  
21 Defendant John R. Batiste, as Chief supervisor and policy maker oversaw the implementation of  
22 the policies, practices, or customs the officers under his command were tasked by him with  
23 following, which demonstrates the Defendant Chief's duty and his J. Does 1-3 Supervisors' duty  
24 to properly train and supervise the officers in their force to ensure so that they do intentionally or  
25 mistakenly perform their duties in ways that result in violations of the constitutional rights of  
26 persons in Washington state.

31.

At the time of the incident involving plaintiff Totten it is believed that it was the policy, practice, or custom of Defendants WSP J. Doe Supervisors 1 -3 and Defendant John R. Batiste to fail to ensure its employees did not unlawfully arrest people at liberty, for DUI based on road side tests that were shown to not be validate and, or reliable for testing citizen's over 65 years of age, or for those with other physical limitations, and further not having adequate screening of police officer candidates during the hiring process, or adequate training, subsequent supervision, and not having discipline of the WSP Troopers after they were hired and out in the field arresting people, relying upon training that did either not adequately address whether a test subject who was 65 years of age should be tested at all or in the same manner as those under 65 years as set forth in the National Highway Traffic Safety Administrations (NHSTA) guidelines for DUI roadside tests, of if it did the training was not followed and the lack of supervision resulted in the training not being followed. Defendants did not require appropriate in-service training or retraining of officers who violated the plaintiff's aforementioned rights and other similarly situated citizens. Defendants' failures to supervise and/or train the officers under their command with regard to testing procedures and the applicability of the tests to the people they were testing resulted in constitutional violations like that which resulted in Plaintiff's Totten's arrest.

32.

As a result of the above-described policies, practices, and customs, police officers of Defendants WSP J. Doe Supervisors 1 -3 and Defendant John R. Batiste, defendant Osberg, and other troopers believed that their actions or inactions would not be properly monitored by supervisory officers and that the defendant officer's misconduct would not be investigated or sanctioned but would be tolerated and/or ratified by Defendants WSP J. Doe Supervisors 1 -3 and Defendant John R. Batiste.

33.

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1 The above-described policies, practices, and customs of Defendants WSP J. Doe  
2 Supervisors 1 -3 and Defendant John R. Batiste demonstrated indifference to the constitutional  
3 rights of persons within Washington and were a cause of the violations of plaintiff's Fourth  
4 Amendment rights, as alleged herein and the cause of further violations to similarly situated  
5 individuals throughout the state of Washington.

6 34.

7 Plaintiff Totten claims damages for the injuries set forth above under 42 U.S.C. § 1983  
8 against Defendants WSP J. Doe Supervisors 1 -3 and Defendant John R. Batiste. Pierce County  
9 for violation of her constitutional rights under color of law in an amount to be proven at trial.

10 **JURY DEMAND**

11 The plaintiff respectfully requests trial by jury.


12 **RELIEF REQUESTED**

13 WHEREFORE, the plaintiff prays for judgment in an amount to be established at trial,  
14 including:

- 15 a. Economic damages to plaintiff against the defendants jointly and severally;  
16 b. Non-economic damages to plaintiff against the defendants jointly and severally;  
17 c. Reasonable attorney's fees and costs to the plaintiff under 42 U.S.C. § 1988;  
18 d. Punitive damages; and  
19 e. Such other relief as this court may deem equitable.  
20

21 DATED this 18<sup>th</sup> day of May 2022.

22 KANNIN LAW FIRM P.S.

23  
24 By:   
25 John Kannin, WSBA #27315  
26 Attorney for Plaintiff